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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,605	07/03/2003	David DeRogatis	24170759.16	7300
<div>23562 7590 11/23/2007 BAKER &amp; MCKENZIE LLP PATENT DEPARTMENT 2001 ROSS AVENUE SUITE 2300 DALLAS, TX 75201</div> <div>EXAMINER GARCIA, ERNESTO</div> <div>ART UNIT 3679 PAPER NUMBER</div> <div>MAIL DATE 11/23/2007 DELIVERY MODE PAPER</div>				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,605	<b>Applicant(s)</b> DEROGATIS ET AL.	
	<b>Examiner</b> Ernesto Garcia	<b>Art Unit</b> 3679	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 65-76 and 78-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65-76 and 78-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2007 and 16 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The indicated allowability of claim 72, now claim 65, is withdrawn in view of the newly discovered reference to Roth, 1,772,159. Rejections based on the newly cited reference follow.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

The drawings were received on August 16, 2007 and September 11, 2007. The drawings are acceptable.

### ***Claim Objections***

Claims 65 and 72 are objected to because of the following informalities:  
regarding claim 65, --being-- should be inserted before "symmetrical" in line 4;  
and,

regarding claim 72, "or" in line 2 should be --and--. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

***Claim Rejections - 35 USC § 103***

Claims 65-76 and 78-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harder, 6,932,329, in view of Roth, 1,772,159.

Regarding claim 65, Harder discloses, in Figures 1 and 2, a plug fastener comprising a first hemispheroidal portion **A1** (see marked-up attachment provided on the Office action mailed on September 22, 2006) and a second hemispheroidal portion **A2** opposed to the first hemispheroidal portion **A1**. Each hemispheroidal portion **A1,A2** comprises a mating surface **33,34** respectively truncating the hemispheroidal portions **A1,A2**. The mating surface **33,34** defines a mating plane parallel to the plane of opposition. The mating planes of the first and second hemispheroidal portions **A1,A2** are opposite from each other across the plane of opposition. Ridges **37-40** extend outwardly from the respective hemispheroidal portions between the mating surfaces **33,34** and the plane of opposition. An aperture **41** is defined within and extending through the first and second hemispheroidal portions **A1,A2**. The aperture **41** has a first countersink **42** defined within an opening **A7** in the first mating surface **33**. The aperture **41** has a screw **24** disposed in the aperture **41**. However, Harder fails to disclose the first hemispheroidal portion **A1** being symmetrical to the second hemispheroidal portion **A2** about their plane of opposition; and the aperture **41** having a second countersink **A6** defined within an opening **A8** in the second mating surface **34**.

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Roth teaches, in Figure 2 or Figure 6, a first hemispheroidal portion being symmetrical to a second hemispheroidal portion about their plane of opposition to allow a plug fastener **23a** to be inserted into a baluster **22a** from either direction of the plug fastener. Therefore, as taught by Roth, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first hemispheroidal portion symmetrical to the second hemispheroidal portion to allow the plug fastener to be inserted into the baluster **21** in Harder from either end of the plug fastener. With respect to the aperture having a second countersink, it should be noted that placing a second countersink would have been obvious since the plug fastener would have been made symmetrical so that the head of the screw can be flushed with either mating surface **33,34**.

Regarding claim 66, the ridges **37-40** are deformable ridges.

Regarding claim 67, one of the mating surfaces **33,34** can be adapted to be affixed to a flat surface of a railing.

Regarding claim 68, the plug fastener can be adapted to be affixed to be affixed to be received within a baluster to be attached to the railing.

Regarding claim 69, the ridges **37-40** are deformable ridges and have sufficient resiliency.

Regarding claim 70, the plug fastener can be adapted to be hidden from view after the baluster is attached to the railing.

Regarding claim 71, a head of the screw **24** is substantially tapered.

Regarding claim 72, given the modification, the head of the screw **24** is disposed within the first countersink **42** or the second countersink **42**.

Regarding claim 73, given the modification, the ridges on the first hemispheroidal portion would have been directed towards the ridges on the second hemispheroidal portion since the plug fastener is symmetrical.

Regarding claim 74, a profile view of the ridges **37-40** has a substantially triangular shape.

Regarding claim 75, the plug fastener is non-metallic.

Regarding claim 76, the plug fastener comprises a material selected from the group consisting of plastic, nylon, polyvinyl chloride, and polyurethane.

Regarding claim 78, given the modification, the ridges **437-40** would have outwardly extended from the exterior surfaces of the hemispheroidal portions to define a substantially spherical shape.

Regarding claim 79, given the modification, the first and second hemispheroidal portions define a substantially spherical shape (see also column 5, lines 32-33, in *Harder*).

Regarding claim 80, the aperture **41** is substantially cylindrical between the countersinks **42**.

Regarding claim 81, the aperture **41** is substantially perpendicular with respect to the pane of opposition.

### ***Response to Arguments***

Applicant's arguments with respect to claim 65 have been considered but are moot in view of the new ground of rejection.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.G.*

E.G.

November 15, 2007

*Daniel P Stodola*

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